

REAL ESTATE EXCHANGE AGREEMENT

THIS REAL ESTATE EXCHANGE AGREEMENT is made and executed by and between the City of Brookings, South Dakota, a South Dakota Municipal Corporation, (hereinafter referred to as "City"), and the County of Brookings, South Dakota, a governmental subdivision of the State of South Dakota (hereinafter referred to as "County");

WITNESSETH:

WHEREAS, each of the parties desires to acquire certain real property from the other party, pursuant to the terms of this Real Estate Exchange Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Exchange of Real Property.** County hereby agrees to convey to City and City hereby agrees to acquire from County, the following described real property:

Parcel "A"

A portion of the northwest corner of Lot Five (5) in Wiese Addition to the City of Brookings, County of Brookings, State of South Dakota, located at 826 – 32nd Avenue, Brookings, South Dakota, as indicated on Exhibit "A" incorporated herein by this reference.

In exchange for the above-described property, the City hereby agrees to convey to County and County hereby agrees to acquire from City the following described real property and monetary compensation:

Parcel "B"

A 3.77 acre "T" – shaped area at the Southeast corner of Southbrook Softball Complex as shown on Exhibit "B". Starting at a point Forty Feet (40') West of the Centerline of 22nd Avenue and Twenty Feet (20') North of the South edge of the Complex's gravel parking, then proceeding South Three Hundred Twenty Feet (S 320'), then West Three Hundred Feet (W 300'), then North Ninety Feet (N 90'), then West Three Hundred Eighty Feet (W 380'), then North One Hundred Ninety Feet (N 190'), then East Four Hundred Eighty Feet (E 480'), then North Forty Feet (N 40'), then East Two Hundred Feet (E 200'), to the starting point, located at 2810 22nd Avenue South, City of Brookings, County of Brookings, State of South Dakota.

2. **Additional Monetary Consideration.** As additional consideration for the above-described exchange, the City of Brookings shall pay in addition to the conveyance of above-described real property (Ex. "B") to the County of Brookings the additional sum of Five Hundred

Thousand and no/100 (\$500,000.00) Dollars, payable in five (5) equal payments over a five (5) year period interest free.

3. **Real Estate Closing Documents and Miscellaneous.** City shall provide a Warranty Deed to the County at Closing to include the property described as Parcel “B” above. City shall convey said property free of liens and mortgages, but said property may be subject to easements, rights of way and restrictions of record. County shall, in turn, provide a Warranty Deed to City at Closing to include the property described as Parcel “A” above. County shall convey said property free of liens and mortgages, but said property may be subject to easements, rights of way and restrictions of record. In addition, County and City, as the case may be, shall also perform the following:

- A. **Title Insurance Policy.** Title Insurance will be acquired for each parcel with the cost of the title policies divided equally between the parties, with each party paying one-half (½) of the premiums.
- B. **Deed Preparation.** The City Attorney and Deputy States Attorney will prepare the respective Warranty Deeds and Certificates of Real Estate Value.
- C. **Transfer Fee and Real Estate Taxes.**
 - (a) **Transfer Fee.** This transaction is exempt from transfer fees.
 - (b) **Real Estate Taxes.** The property which is the subject of this Agreement is exempt from Real Estate Taxes.
- D. **Closing Date.** The Closing Date shall occur when a mutually acceptable Closing Date is selected by the parties.
- E. **Possession.** The parties shall each acquire possession of the above-described property immediately following Closing.
- F. **Legal Descriptions of Parcels A and B.** Each parcel shall be described in a manner which is acceptable to the parties and in order for the Deeds to be recordable.
- G. **Survey and Platting Costs.** Each of the parties agrees to pay one-half (½) of the survey and platting costs. Parcel “A” will require platting and Parcels “A” and “B” will each require a survey to create appropriate legal descriptions.
- H. **Zoning.** The parties agree to cooperate with respect to any zoning changes which may be necessary based on the change of use resulting from the exchange of the above-described properties.

I. **Swiftel Center 4-H Program Scheduling/ and Agreement.** The City and County recognize the importance of the use of Swiftel Center facilities by the Brookings County 4-H Program. The City and County agree to continue to provide Brookings County 4-H with access to its Swiftel Center facilities for the Brookings County 4-H Achievement Days programs, the Horse Show, the Dog Show, and the Winter Calf Show, in the same manner as is currently being provided. The parties agree to execute an acceptable Agreement concerning Brookings County 4-H access to the Swiftel Center facilities prior to Closing.

J. **Parking Lot and Drainage Improvements/Parking Lot Easement and Joint Use Agreement.** The parking lot currently serving Parcel "B" (adjacent to and north of the Outdoor Adventure Center) is owned by the City and will continue to be owned by the City, however, the parties agree to execute by the date of Closing a Joint Use Parking Lot Agreement and Easement so that each of the parties may continue to use the parking lot to serve their respective needs. It is currently a gravel surface which is maintained by the City. The City will continue to maintain the gravel parking lot and drainage at the City's expense. In the event the City desires to improve the parking lot with a hard service, or improve the drainage of the parking lot, the County will not be obligated to contribute to the cost for such improvements. However, neither party will be prohibited from working jointly with the other party should both parties desire to improve the surface and/or drainage concerning the parking lot. Neither party, however, shall be obligated to improve the parking lot.

4. **Contingencies.** The obligations of the City and County to complete this Exchange Agreement is contingent upon the following contingencies:

- (a) The parties acknowledge the following contingency is a condition precedent to the performance of this Agreement by the City and County. Briefly stated, the contingency concerns the right of the public to petition for referendum concerning this transaction.
 - (i) **Referendum/Election.** The City and County's obligation to complete this Exchange Agreement with respect to the property described herein will be terminated if the County Commission or the City Council's decision to complete this Exchange Agreement with respect to the above-described property is referred by the voters and the voters do not approve this transaction. "Referred" means a Petition to Refer, signed by the requisite residents is filed and the voters of the City or the County, or both, as the case may be, at an election, vote to nullify the decision of the City and County to complete this Exchange Agreement. In the event of a successful referral, this Agreement will be null and void. This contingency will be waived at the later of the expiration date of any referendum period if there is no referendum, or the date following the election canvassing if there is a referendum

election, and this Exchange Agreement is approved at a referendum election. However, a referendum decision by voters of the City or County or both which does not approve this Exchange Agreement will permit the City or County to terminate this Agreement at no cost or liability to the City or County. The City and County will waive this contingency 20 days after publication of the Resolution approving this Agreement if referendum petitions are not filed with either the City or County.

- (b) **Clear and Marketable Title.** That City and County each provide the other party with clear and marketable title to the above-described real properties by Warranty Deeds, which contain only easements, covenants and restrictions of record.

If there are any title restrictions, defects or burdens to which either party objects, and which constitute bona fide title defects, other than easements, rights of way and restrictions of record, such objection shall be stated in writing to the City and County, as the case may be, and the City or County will be allowed a reasonable time of not less than sixty (60) days in which to correct the same.

If either of the foregoing contingencies are not satisfied or resolved or waived by the City and County, then this Agreement may be terminated at the option of the City or County and this Agreement shall be null and void.

5. Good Faith/Mutual Cooperation.

- (a) The City and County will in good faith seek to satisfy all contingencies to this Real Estate Exchange Agreement and will act in a timely manner to permit its prompt Closing.

At any time and from time to time before and after the Closing, the City will, at the request of the County, and without further consideration, promptly execute, acknowledge and deliver such further instruments and take such further action as County may reasonably request in order to consummate and confirm the transaction contemplated by this Agreement and to accomplish the purposes of this Agreement; however, no such instruments or actions will impose upon the City any burden or obligation which is in excess of any burden or obligation specifically imposed upon the City pursuant to the terms of this Agreement.

- (b) At any time and from time to time before and after the Closing, the County will, at the request of the City, and without further consideration, promptly execute, acknowledge and deliver such further instruments and take such further action as the City may reasonably request in order to

consummate and confirm the transaction contemplated by this Agreement and to accomplish the purposes of this Agreement; however, no such instruments or actions will impose upon the County any burden or obligation which is in excess of any burden or obligation specifically imposed upon the County pursuant to the terms of this Agreement.

6. **Notice.** This Real Estate Exchange Agreement was jointly prepared by Steven J. Britzman, City Attorney for the City of Brookings, 521 Sixth Street, Suite 104, Brookings, South Dakota 57006, and Abigail Howard, Chief Deputy States Attorney for the County of Brookings, 520 3rd Street, Suite 330, Brookings, South Dakota 57006.

7. **Entire Agreement.** This written Agreement constitutes the complete Agreement between the parties and supersedes any prior oral or written Agreement between the parties regarding the subject matter of this Agreement. There are no verbal agreements that change this Agreement and no waiver of its terms will be effective unless such are made and executed in writing and duly acknowledged as received by the parties.

8. **Binding Effect.** This Agreement binds the parties hereto.

Dated this ____ day of August, 2016.

CITY OF BROOKINGS, SOUTH DAKOTA

(SEAL)

By: _____
Tim Reed, Mayor

ATTEST:

Shari L. Thornes, City Clerk

Dated this ____ day of August, 2016.

COUNTY OF BROOKINGS

(SEAL)

By: _____
Ryan Krogman, Chairperson, Brookings
County Board of County Commissioners

ATTEST:

Brookings County Finance Officer